

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CITIBANK SOUTH DAKOTA, N.A.,

Plaintiff,

vs.

GAERY D. RUTHERFORD,

Defendant.

No. CV-05-198-AAM

**ORDER DENYING
MOTION FOR
RECONSIDERATION**

On July 7, 2005, this court entered an order remanding this matter to the Chelan County Superior Court finding the defendant had improperly removed the matter to this court. (Ct. Rec. 3). Defendant now asks the court to reconsider its order.

Review of the complaint filed by the plaintiff in the Chelan County Superior Court confirms that the plaintiff has not asserted any federal claims against the defendant which would confer federal question jurisdiction upon this court. (Ct. Rec. 4). As this court explained in its “Order of Remand,” the existence of a federal question is determined **solely** from the plaintiff’s (Citibank’s) complaint. *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 10, 103 S.Ct. 2841 (1983). The fact that defendant may have defenses against plaintiff’s claims based on federal law and may assert counterclaims against plaintiff based on federal law is irrelevant. Removal cannot be based on a counterclaim raising a federal action. *Metro Ford*

**ORDER DENYING MOTION
FOR RECONSIDERATION-**

1 *Truck Sales, Inc. v. Ford Motor Co.*, 145 F.3d 320, 326-27 (5th Cir. 1998). Allowing removal on
2 this basis would permit the defendant to manipulate removal jurisdiction.

3 Review of the complaint filed in state court confirms that the amount in controversy does
4 not exceed \$75,000. This is in addition to the fact that removal is precluded because defendant
5 is a citizen of the State of Washington. 28 U.S.C. §1441(b). Therefore, there is no basis for
6 diversity jurisdiction either.

7 Defendant's "Motion For Reconsideration" (Ct. Rec. 5) is **DENIED**.

8 **IT IS SO ORDERED.** The District Executive shall forward copies of this order to the
9 parties and a **certified** copy to the Clerk of the Chelan County Superior Court.

10 **DATED** this 21st of July, 2005.

11
12 s/ Alan A. McDonald
13 ALAN A. McDONALD
14 Senior United States District Judge
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